

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 21 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 23-30003

Plaintiff-Appellee,

D.C. No. 2:21-cr-00130-LK-1

v.

MEMORANDUM\*

ALBERT SAMOA MAIFEA,

Defendant-Appellant.

Appeal from the United States District Court  
for the Western District of Washington  
Lauren King, District Judge, Presiding

Submitted March 14, 2023\*\*

Before: SILVERMAN, SUNG, and SANCHEZ, Circuit Judges.

Albert Samoa Maifea appeals from the district court's judgment and challenges the four-month sentence imposed upon the third revocation of his supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Maifea contends that the district court erred by listing the 18 U.S.C.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 3553(a)(2)(A) factors among those it was considering in selecting the sentence. Maifea is correct that § 3553(a)(2)(A) factors may not be considered at a revocation sentencing, *see United States v. Miqbel*, 444 F.3d 1173, 1182 (9th Cir. 2006), but even assuming the district court erred, any error here was harmless. In response to defense counsel's objection, the district court explained that the prohibited factors did not affect its sentencing decision. The record, which shows that the sentence was driven by Maifea's poor performance on supervision, supports this conclusion. *See United States v. Ali*, 620 F.3d 1062, 1074 (9th Cir. 2010) (sentencing error is harmless if the sentence would not be shorter absent the alleged error).

**AFFIRMED.**